

## **REMARKS**

This Amendment, in connection with the following remarks, is submitted as fully responsive to the Office Action. Claims 1 and 16 are the independent claims. Claims 1-3, 6, 7, 9-20 were pending. Applicants have amended claims 1, 6, 9 and 16, and have added new claim 21. No new matter has been added. Favorable reconsideration is requested.

Claims 1 and 9 stand rejected under 35 U.S.C. § 112, first paragraph, and claim 6 stands rejected under 35 U.S.C. § 112, second paragraph. Claim 9 also stands objected to under 37 C.F.R. § 1.759(c) as being in improper dependent form.

Regarding the 35 U.S.C. § 112, first paragraph rejections, Applicants have amended the first claim element to recite “offering, by the responsible party, to pay each of a plurality of unsecured creditors having allowed claims against the debtor.” Support for this element, as amended, and for the claim element “wherein if any of said unsecured creditors accepts the offer, paying said predetermined payment amount to said unsecured creditor within a predetermined time period following said acceptance” is found at least in ¶¶ [0020], [0022], [0025], [0030], [0033] and [0034], as well as Figs. 1-5 of the present specification (references are to U.S. Patent Application Publication No. 2004/0158531, the published version of the present specification).

The present application describes a novel method of distributing a debtor’s property to the unsecured creditors in an insolvency proceeding (secured creditors have other rights, including the right to petition the court to allow them to foreclose property, obtain interim payments from secured income streams, such as, for example, rent, *etc.*

and generally do not have to wait through a series of initial, interim and final distributions in the same manner as unsecured creditors do). The Specification describes in some detail how the distributions are made to creditors with allowed claims. See, *e.g.*, Figs. 1-4, Item 120 “creditors with allowed claims.” Inasmuch as insolvency proceedings are overseen by the judiciary, and only allowed claims are ever paid to claimants, the inventive method is directed to such allowed claims. An allowed claim is one that meets certain criteria, as is provided in the legal authority that governs proceedings in insolvency proceedings, such as, for example, the U.S. Bankruptcy Code and corresponding regulations. Specification at ¶ [0003].

Noteworthy in the claimed method and system is the fact that the responsible party makes an initial offer to each unsecured creditor having an allowed claim, but that offer is only good for a defined period of time. This is shown in Fig. 5, at 530, 540, 550 and 560-570 and its accompanying text, ¶¶ [0028] – [0031]. There is a defined initial election period 530 during which the unsecured creditors with allowed claims may accept the responsible party’s offer. If they do so at 540, then at 560 they file a claim, and at 570 are paid immediately, not having to wait for a series of intermediate and final distributions as in the prior art scenario, as is described in Figs. 1-3 and ¶¶ [0006]-[0009] of the Specification.

Oh the other hand, if an unsecured creditor declines the responsible party’s offer, then at 550 he must wait for payment as per the ultimate distribution plan approved by the court, in the conventional manner.

For this scheme to work, a particular responsible party, *e.g.*, an insurer, may require a majority of the creditors need to accept, as provided in ¶ [0022] (90% as an example) prior to committing to put up the insurance policy.

Original claims 2-4 recited the predetermined time and the consequences of a creditor not accepting the responsible party's offer.

Regarding the 35 U.S.C. § 112, second paragraph rejection of claim 6, Applicants have amended claim 6 to recite "the responsible party."

Regarding the objection to claim 9, this claim has been amended to depend upon claim 1.

Claims 1-3, 5-7, 9, 10 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lazic, *Arbitration and Insolvency Proceedings: Claims of Ordinary Bankruptcy Creditors*, EJCL, Vol. 3.3 (December 1999) ("Lazic") in view of Wyman, *May I Have My Balance Please? Allocation of payments in bankruptcy cases*, Commercial Law Journal, Vol. 100., Issue 2 (Summer 1995) ("Wyman"). Claims 6, 7, 13-15, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lazic and Wyman, and further in view of U.S. Published Patent Application No. 2001/0037274 to Monticciolo ("Monticciolo"). Finally, claims 11 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lazic and Wyman, and further in view of U.S. Patent No. 5,704,045 to King ("King").

Applicants respectfully traverse these prior art rejections.

Lazic generally describes the invoking of arbitration clauses in insolvency proceedings, and whether a bankruptcy trustee is bound by such arbitration clauses, or whether a dispute arising out of a contract that has an arbitration clause should be arbitrated post bankruptcy filing or should be decided by the bankruptcy court. Lazic at 4-1, Sections 3 and 4. These arbitration clauses are found in agreements between the debtor and its individual creditors entered into in the normal course of business, and do not address insolvency proceedings. Lazic does not describe the claimed invention, and the agreements containing arbitration clauses discussed in Lazic have nothing to do with the financial arrangement of the claimed invention. The Examiner cites to page 2, 2<sup>nd</sup> paragraph of Lazic as teaching “establishing a financial arrangement between a responsible party and a debtor in the insolvency proceeding, the financial arrangement including terms for paying claims against the debtor.” Office Action at page 4. This is, respectfully, not what Lazic says at all in the cited language. Lazic states that the article will concentrate on the claims of non-secured, non-preferred creditors’ claims. Lazic continues:

In particular, these are the claims arising from a contractual relationship between the debtor and another party concluded before the commencement of bankruptcy proceedings, where the contract provided for the settlement of disputes by arbitration.

Lazic at 2 (emphasis added).

Here, the contractual relationship is the basis of the claim itself and the “another party” is the claimant/creditor of the debtor -- not an arrangement for a third party insurer to try and settle all claims against an insolvent debtor with immediate payment offers. The contracting parties in Lazic were the debtor and the various claimants of that

debtor, and the contract was entered into before the bankruptcy proceedings – not afterward as a means to expedite claim settlement and distribution, as in the claimed invention. The Lazic contract had an arbitration clause, which may allow for resolution of the amount of the claim between this particular “another party” -- *i.e.*, creditor -- and the debtor. But the referred to Lazic arrangement is not at all the claimed financial arrangement with a responsible party, such as an insurer, for example, to administer and settle claims against the debtor in an actual insolvency proceedings. Thus, Lazic does not even address streamlining the distribution of debtor property in an insolvency proceeding as in the claimed invention, and thus Lazic cannot teach or even suggest the method or system of claims 1 and 16.

Wyman simply describes the standard procedure in a prior art bankruptcy case. Wyman does not teach “establishing a financial arrangement between a responsible party and a debtor in the insolvency proceeding, the financial arrangement including terms for paying claims against the debtor” as claimed.

The cited portion of Wyman, pages 3-5, Section IV “Treatment of post-petition payments” has nothing to do with paying creditors’ claims by a responsible party as claimed. This section deals with post-petition payments of rents, interest etc. to secured creditors and whether those payments in fact should be applied to the principal amount of their claim. Nowhere in Wyman is there any teaching or suggestion of “establishing a financial arrangement between a responsible party and a debtor in the insolvency proceeding, the financial arrangement including terms for paying claims against the debtor.” Every bankruptcy proceeding has a plan. Wyman describes such plans. The claimed invention adds a new element to the plan – arranging for a responsible third party

to insure the payment of allowed claims, in return for giving such responsible party the right to offer immediate payment – at a discount – to creditors in return for accepting the discount. If the creditor refuses, he gets paid according to the plan, but he has to wait for it, precisely as in the prior art scenarios of Wyman, and of Figs. 1-3 of the Specification.

Wyman simply does not teach the claimed invention either.

Monticciolo does not cure the deficiencies of Lazic and Wyman as references against the claimed invention. Similarly, King is directed towards a risk transfer system, preferably to be offered by an insurance company or insurance entity. In King, transfer of risk to underwriters is used to lay-off a certain amount of risk inherent in a venture in return for giving the risk acceptor a share of the potential profits and investment returns that flow from the venture.

Neither Monticciolo nor King teaches or even describes paying creditors of a debtor in an insolvency proceeding, or creating novel methods of expediting the payment of allowed creditors' claims. Thus, claims 1 and 16 are patentable over each of Lazic, Wyman, Monticciolo and King, whether alone or in combination.

The remaining dependent claims are urged as patentable for similar reasons.

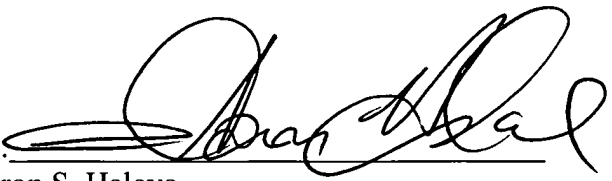
If there are any open issues Applicants respectfully request a personal interview with the Examiner to advance prosecution. Given the substantial differences in how Applicants understand the import of the cited references relative to how these references were characterized in the Office Action, such an interview is believed to be very helpful if not absolutely necessary.

No additional fees are believed due herewith. If any additional fees are due, the Commissioner is hereby authorized to charge any fee deemed necessary for the entry of this Amendment to Deposit Account No. 50-0540.

Dated: May 13, 2008

Respectfully submitted,

KRAMER LEVIN  
NAFTALIS & FRANKEL LLP  
1177 Avenue of the Americas  
New York, NY 10036

By:   
Aaron S. Haleva  
Reg. No. 44,733  
Tel (212) 715-7773  
Fax (212) 715-9397